



## ***CLOSED CASE SUMMARY***

ISSUED DATE: OCTOBER 15, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0180

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding and Pursuits, 13.031-POL 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe a Person in the Vehicle Has Committed a Violent Offense or	Not Sustained - Training Referral
# 2	13.031 - Vehicle Eluding and Pursuits, 13.031-POL 5. Officers Will Cease Pursuit When the Risk of Pursuit Driving Outweighs the Need to Stop the Eluding Driver	Not Sustained - Unfounded
# 3	13.031 - Vehicle Eluding and Pursuits, 13.031-POL 13. Intentional Vehicle-to-Vehicle Contacts Are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy	Not Sustained - Unfounded

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding and Pursuits, 13.031-POL 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe a Person in the Vehicle Has Committed a Violent Offense or	Not Sustained - Training Referral
# 2	13.031 - Vehicle Eluding and Pursuits, 13.031-POL 5. Officers Will Cease Pursuit When the Risk of Pursuit Driving Outweighs the Need to Stop the Eluding Driver	Not Sustained - Unfounded
# 3	13.031 - Vehicle Eluding and Pursuits, 13.031-POL 13. Intentional Vehicle-to-Vehicle Contacts Are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy	Not Sustained - Unfounded

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

It was alleged that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) engaged in an unauthorized pursuit of a car driven by Community Member #1 (CM#1).



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**ADMINISTRATIVE NOTE:**

After participating in SPD's Force Investigation Team's (FIT) callout, OPA opened this investigation.

On August 28, 2023, the Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.

**SUMMARY OF INVESTIGATION:**

On March 28, 2023, while on patrol, NE#1 saw a car (Vehicle #1)—driven by CM#1—driving without a license plate. NE#1 tried to initiate a traffic stop, but Vehicle #1 ignored the signals. NE#1 stopped following Vehicle #1 but radioed its description. Subsequently, Witness Officer #1 (WO#1) and Witness Officer #2 (WO#2) spotted Vehicle #1 unoccupied and parked at a gas station. As WO#1 and WO#2 approached Vehicle #1 on foot, CM#1 exited the gas station and entered Vehicle #1's driver's seat. CM#1 reversed Vehicle #1, trapping WO#1 and WO#2 between Vehicle #1's open driver's side door and concrete pillars posted along the gas station. WO#1 and WO#2 were dragged several feet. NE#1 and NE#2 arrived at the gas station in separate patrol cars. NE#1 positioned his patrol car behind Vehicle #1. Vehicle #1 reversed into NE#1's patrol car and sped off. NE#1 and NE#2 followed Vehicle #1. NE#1 rammed Vehicle #1's rear corner panel, causing Vehicle #1 to spin out, followed by NE#2 ramming Vehicle #1's front, pinning it and causing its airbags to deploy. CM#1 was arrested, and officers learned that he had an active no-bail Department of Corrections felony warrant for escape, four prior arrests for driving under the influence, and was unlicensed to drive.

NE#1 completed an incident statement. In summary, NE#1 stated Vehicle #1 initially caught his attention when he saw it parked with activated taillights and no rear license plate in an area where stolen cars were commonly found. NE#1 wrote that he slowly passed Vehicle #1 and saw CM#1 in the driver's seat and that it had no front license plate. NE#1 noted that license plates were commonly removed from stolen cars. NE#1 wrote that he reapproached Vehicle #1 to conduct "a suspicious stop." NE#1 stated that Vehicle #1 pulled off as NE#1 attempted the stop. NE#1 activated emergency lights and followed Vehicle #1, but it did not stop. As Vehicle #1 approached an intersection, NE#1 stopped following it and radioed its description. NE#1 relocated Vehicle #1 stopped at a red light at S Michigan Street and Corson Avenue S. NE#1 wrote that Vehicle #1 then drove southbound in the northbound lanes of Corson Avenue S and ran a red light, turning onto Marginal Way S. NE#1 stated that WO#1 called him, indicating that Vehicle #1 was at the gas station where NE#1 initially located it.

As NE#1 headed that way, WO#2 radioed, "[sounding] like he was in extreme distress." NE#1 arrived at the gas station and saw Vehicle #1's driver's door open and its reverse lights activated. Vehicle #1 then reversed, striking WO#2 against a concrete post. WO#1 was also hit and flung by Vehicle #1's open driver's side door. Vehicle #1 quickly reversed into the front of NE#1's police cruiser and sped off. NE#1 noted that WO#1 and WO#2 appeared "severely injured." NE#1 pursued Vehicle #1. NE#1 lost sight of Vehicle #1 but relocated it at Airport Way S and S Lucile Street. NE#1 radioed where he located Vehicle #1. NE#1 activated emergency lights and siren, but Vehicle #1 ignored it, turning westbound onto S Carstens Street. Vehicle #1 turned southbound into a northbound lane on Corson Avenue S. It then breached a raised curb divider, blocking traffic exiting Interstate-5 at Corson Avenue S. Vehicle #1 turned westbound onto S Michigan Street, where NE#1 rammed its rear and NE#2 rammed its front.

Similarly, NE#2's statement indicated that he responded after hearing WO#2 screaming "a desperate call for help" over the radio. NE#2 also heard NE#1 radio that Vehicle #1 rammed into his patrol car. NE#2 relocated to where NE#1 radioed and saw Vehicle #1 "drive recklessly over yellow concrete barriers..." Vehicle #1 turned onto S Michigan Street, where NE#1 rammed its rear and NE#2 rammed its front.



FIT interviewed NE#1 and NE#2, whose accounts materially mirrored their written statements. Regarding his elected vehicle tactic, NE#1 said he intentionally rammed Vehicle #1's driver's side to force it to spin out and immobilize. NE#2 said he intentionally decelerated before ramming Vehicle #1's front to prevent further elusion.

OPA also interviewed NE#1 and NE#2. Both were consistent with their FIT interviews and written statements. Additionally, NE#1 said he rammed Vehicle #1 out of fear that it would "seriously injure or kill someone." He also noted that a dispatcher never asked whether they were in a vehicle pursuit, and a supervisor never terminated it. NE#2 estimated that he pursued Vehicle #1 for 23 seconds. NE#2 said before colliding with Vehicle #1, he had a second to decide whether to turn left into oncoming traffic, turn right into a pole or NE#1's cruiser, or strike Vehicle #1 "in a controlled fashion."

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

***13.031 - Vehicle Eluding and Pursuits, 13.031-POL 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe a Person in the Vehicle Has Committed a Violent Offense or a Sex Offense and Both of the Following....***

It was alleged that NE#1 engaged in an unauthorized vehicle pursuit.

Officers may only engage in a vehicle pursuit when there is probable cause that an occupant of the pursued vehicle committed a violent offense or a sex offense. See SPD Policy 13.031-POL-4. The following factors must also exist: (1) probable cause that the suspect poses a significant imminent threat of death or serious physical injury to others where the suspect escaping outweighs the risk of pursuit driving, and (2) a supervisor authorized the officer to continue the pursuit. *Id.*

Here, there was probable cause that CM#1 committed a violent offense. Specifically, when WO#1 and WO#2 attempted a *Terry* stop at the gas station, CM#1 reversed Vehicle #1, causing its open driver's side door to slam both uniformed officers into concrete posts. CM#1 also reversed Vehicle #1 into NE#1's marked patrol car, another violent and felony offense. Moreover, there was probable cause that CM#1 posed a significant imminent threat of death or serious physical injury to others that outweighed the inherent risk of pursuit driving. Specifically, CM#1 had demonstrated a willingness to seriously injure, if not kill, uniformed officers.

*Vehicle #1 reversing into NE#1's patrol car (from NE#1's in-car video)*



That, coupled with CM#1 erratic driving during rush hour, violating traffic control devices, traveling at high speed, and driving into oncoming traffic and over traffic dividers, established that Vehicle #1 needed to be stopped. However, neither NE#1 nor NE#2 sought a supervisor's authorization to pursue Vehicle #1. While NE#1 suggested that the dispatcher failed to ask whether they were in pursuit and no supervisor terminated it, it was the named employees' duty, mainly NE#1, who was involved at every stage, to radio that they pursued Vehicle #1 and seek a supervisor's authorization to continue it. Overall, although NE#1's and NE#2's reasons for pursuing Vehicle #1 were understandable, they fell short of satisfying policy requirements.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command shall discuss OPA's findings with NE#1 and conduct appropriate training and counseling. Training and counseling shall be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

#### **Named Employee #1 - Allegation #2**

#### ***13.031 - Vehicle Eluding and Pursuits, 13.031-POL 5. Officers Will Cease Pursuit When the Risk of Pursuit Driving Outweighs the Need to Stop the Eluding Driver***

It was alleged that NE#1 failed to stop pursuing Vehicle #1 when the pursuit driving risks outweighed the need to stop CM#1.

Officers will cease a pursuit when the risk of pursuit driving outweighs the need to stop the eluding driver. See SPD Policy 13.031 POL 5. The policy also outlines a non-exhaustive list of factors to guide officers in making that determination. See id.

Per SPD policy, pursuing officer considerations should include the reasons for the pursuit, location, weather, and traffic. As noted at Named Employee #1 – Allegation #1, the officers had a legitimate and strong interest in detaining CM#1, who posed a heightened danger to drivers and pedestrians. Although the officers pursued Vehicle #1 on busy roads as rush hour traffic started to pick up, those factors also established the need to stop Vehicle #1 immediately. Further, there was no indication of dangerous weather conditions to accent the inherent dangers of pursuit driving. Above all, as CM#1 remained a danger to others throughout the pursuit, there was no point when the need to stop him fell below the inherent dangers of pursuit driving.



*Vehicle #1 driving from oncoming traffic across a traffic divider during the pursuit (from NE#1's in-car video)*



Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #1 - Allegation #3**

***13.031 - Vehicle Eluding and Pursuits, 13.031-POL 13. Intentional Vehicle-to-Vehicle Contacts Are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy***

It was alleged that NE #1 engaged in prohibited pursuit-ending tactics.

"[Intentional] vehicle-to-vehicle contacts are prohibited as pursuit-ending tactics except as justified under the use of force policy." Vehicle tactics "are uses of force that officers may use only when consistent with Manual Section 8.300 and must be reported under 8.400." SPD Policy 13.031-POL-13.

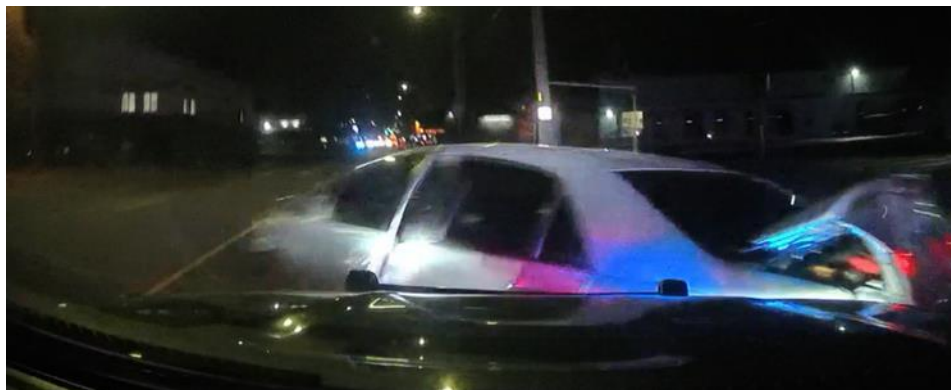
On January 13, 2023, SPD's chief emailed (entitled, 'Vehicle Tactics') the department outlining vehicle tactic restrictions.<sup>1</sup> It described ramming as "the intentional use of a vehicle to strike another vehicle for the purpose of interrupting or incapacitating that vehicle." It stated that ramming is only permitted in exigent circumstances and when there are no other reasonable means to stop a vehicle, and the suspect poses an imminent threat of serious physical injury or death.

Here, as discussed at Named Employee #1 – Allegation #1, exigent circumstances existed to stop CM#1, whose driving threatened serious injury or death to others. While neither NE#1 nor NE#2 attempted vehicle tactics of lesser force, there was no apparent opportunity to do so. Both had small windows of opportunity to end the pursuit, which they successfully did without causing serious injury.

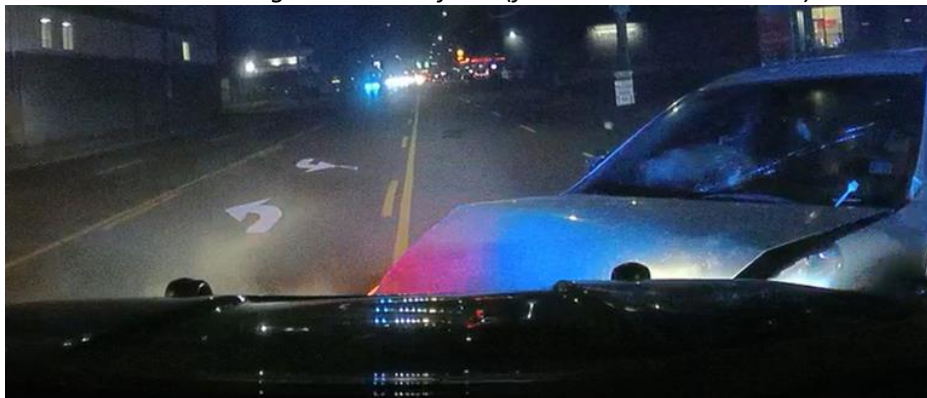
*NE#1 striking Vehicle #1's rear (from NE#1's in-car video)*

<sup>1</sup> That email later became interim SPD policy.





*NE#2 striking Vehicle #1's front (from NE#2's in-car video)*



Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 - Allegation #1**

***13.031 - Vehicle Eluding and Pursuits, 13.031-POL 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe a Person in the Vehicle Has Committed a Violent Offense or a Sex Offense and Both of the Following....***

It was alleged that NE#2 engaged in an unauthorized vehicle pursuit.

For the reasons at Named Employee #1 – Allegation #1, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2's chain of command shall discuss OPA's findings with NE#2 and conduct appropriate training and counseling. Training and counseling shall be documented and maintained in Blue Team.



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Recommended Finding: **Not Sustained - Training Referral**

**Named Employee #2 - Allegation #2**

***13.031 - Vehicle Eluding and Pursuits, 13.031-POL 5. Officers Will Cease Pursuit When the Risk of Pursuit Driving Outweighs the Need to Stop the Eluding Driver***

It was alleged that NE#2 failed to stop pursuing Vehicle #1 when the pursuit driving risks outweighed the need to stop CM#1.

For the reasons at Named Employee #1 – Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 - Allegation #3**

***13.031 - Vehicle Eluding and Pursuits, 13.031-POL 13. Intentional Vehicle-to-Vehicle Contacts Are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy***

It was alleged that NE #2 engaged in prohibited pursuit-ending tactics.

For the reasons at Named Employee #1 – Allegation #3, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**